



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 8303667

Date: JULY 2, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, the deputy general manager of his employer's "Brand Management Center" and former financial journalist, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Beneficiary met the initial evidence requirement, having satisfied only two of the requisite three evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x).

On appeal, the Petitioner contends that he meets four of the initial evidentiary criteria and is otherwise qualified for the benefit sought.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

At the time of filing, the Petitioner provided evidence that he is employed by [REDACTED] [REDACTED] as the deputy general manager of its “Brand Management Center.” The record reflects that the Petitioner has worked in corporate brand management positions for three other Chinese companies since 2015. Previously, he worked as a financial journalist, most recently as an editorial board member for [REDACTED]. The Petitioner states that he has several potential employment opportunities in the United States, which include starting his own financial media platform, working as a columnist for an information technology company, or working as a research consultant for a university sociology department.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Petitioner claims that he meets four of these ten regulatory criteria, summarized below:

- (iv) Participation as a judge of the work of others in his field;
- (v) Authorship of scholarly articles;
- (vii) Performing in a leading or critical role; and
- (ix) High salary or other remuneration.

The Director found that the Petitioner met two of these four evidentiary criteria, relating to his participation as a judge of the work of others and high salary. On appeal, the Petitioner asserts that he submitted sufficient evidence to establish that he meets the other two claimed criteria.

After reviewing all the evidence in the record, we find that the Petitioner has satisfied two criteria. We agree with the Director that the Petitioner has satisfied the judging criterion based on his participation on the judging panel for a special issue of *Southern Weekend* magazine, which recognized the best Chinese journalism in the first decade of the 21st century. However, we disagree with the Director's favorable finding regarding the high salary criterion, and with his unfavorable finding regarding the scholarly articles criterion. We discuss these findings below.

Evidence of the individual's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

The Petitioner claims eligibility under this criterion based on his co-authorship of the book published by University Press in 2006.

In a request for evidence (RFE), the Director acknowledged that the Petitioner authored this book and implied that the initial evidence satisfied the plain language of this criterion. But he noted that submission of one publication under this criterion is not reflective of the Petitioner "being amongst the small percentage at the very top of the field."¹ In the denial decision, however, the Director found that the Petitioner's book was "published for the general public" and is therefore not "scholarly."

The evidence reflects that the Petitioner's book was authored by him and other "senior media financial journalists." For fields outside the academic area, a scholarly article should be written for learned persons in the field, which means individuals "having or demonstrating profound knowledge or scholarship."² The record does not support the Director's determination that the book's intended audience is "the general public." Rather, based on its documented intended audience and the fact that the book is regularly cited in scholarly articles in the academic arena, the record supports the Petitioner's claim that it is regarded as a professional publication. In addition, while it has been used as a textbook in university journalism curricula, the record reflects that the book is also intended as a resource for journalism professionals. Accordingly, we conclude that the Petitioner has established that he meets this criterion.

Evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

¹ Consistent with the two-part review described in *Kazarian*, we note that submission of one qualifying publication is all that is required to meet the plain language of this criterion; an assessment of whether the evidence demonstrates a petitioner's sustained acclaim or placement among those at the top of the field should be conducted as part of a final merits determination if a petitioner satisfies the initial evidentiary requirements.

² See USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14*, 9 (Dec. 22, 2010), <http://www.uscis.gov/legal-resources/policy-memoranda>

On appeal, the Petitioner claims that he meets this criterion based on his “critical roles” with both [redacted] and [redacted]. The Petitioner has also claimed to hold “leading roles” with these employers.

For a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.³ Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities. It is not the title of a petitioner’s role, but rather the performance in the role that determines whether the role is or was critical.⁴

The Petitioner initially provided a copy of his August 2015 offer letter from [redacted] indicating its intent to hire him as its “Director of Brand Department.” In a cover letter, the Petitioner explained that this was “a management role” with responsibility for “overseeing its functional divisions of public strategy” and “communicating with finance and economic media” to promote the group’s public image. He stated that “he was highly engaged in many famous events” noting that he: (1) “led [redacted] to establish an annually published internal magazine called [redacted]”; (2) organized a news release to promote a speech made by [redacted]’s CEO at [redacted] University; and (3) was “engaged to invite directors of real estate consulting companies to comment on the matter of transition beyond China’s real estate development.”

The Petitioner’s initial submission included evidence that [redacted], which is ranked on the *Fortune* Global 500 list, has a distinguished reputation. However, he did not submit evidence in support of his claims that he served in a critical role. As noted, he provided a copy of his “Employment Confirmation Letter” but this was an employment offer letter; it did not identify his duties or accomplishments with the company. He also provided a screen shot of a [redacted] magazine from the [redacted]’s website. Although the cover letter indicates that the Petitioner led the establishment of the magazine, the sample issue provided was published in 2014. Given that the Petitioner indicates that he joined [redacted] in September 2015, this evidence does not support his claim that he led the establishment of the [redacted] magazine.

Finally, the Petitioner submitted a reference letter from [redacted] who indicates that he is the Chief Marketing Officer for a U.S. company, [redacted]. [redacted] states that the Petitioner was employed as [redacted]’s “Brand Manager,” recounts the same three achievements mentioned in the Petitioner’s cover letter and concludes that “[i]t is not an exaggeration to say that [the Petitioner] has played an important role in such a famous enterprise.” [redacted] does not indicate that he has any prior employment or affiliation with [redacted], or otherwise claim any personal knowledge of the Petitioner’s duties and contributions at that company.

In the RFE, the Director advised the Petitioner that he would need to submit letters from his employers’ high-level executive officers with personal knowledge of his leading or critical role, who could provide detailed and probative information, including his specific tasks and accomplishments and how they compared to those of other managers.

³ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

⁴ *Id.*

In response, the Petitioner submitted a letter from [] of [] who states that she served in the position of Vice President of New Media during the Petitioner's two-year tenure with the company []. [] states that the Petitioner was "an important figure in [] particularly in the Group's branding campaigns in traditional media." She further indicates that the Petitioner "led the brand department to create and maintain a favorable public image for []," [] also credits the Petitioner with executing a "correct corporate branding strategy," mentions his leadership of "annual internal publications" (including []) that are acclaimed by the company's workforce, and notes his handling of a "PR crisis" involving the group CEO's [] University speech, mentioned in the initial support letter. She concludes that the Petitioner's work "significantly contributed to the Group's public image and strength."

The Director determined that although []'s letter provided information about the Petitioner's duties in the brand department, it did not establish how his position was leading or critical to the entire organization, or establish that he was responsible for the organization's success or standing to a degree consistent with the meaning of "leading or critical role."

On appeal, the Petitioner asserts that his position with [] was "significantly important to the outcome of the organization because [he] was the ONLY Director of the Brand Department." He also asserts that "it is well established that corporate branding is significantly important to the development of any organization," and submits articles about branding from *Forbes* and *Brandingmag*. Finally, the Petitioner submits a partial, undated personnel list for [] published by the website *SumView*, which according to a submitted article from *ScienceDirect* is "a Web-based review summarization system to summarize product reviews and customer opinions." The translation of the personnel list identifies the Petitioner as "Brand 2 Director."

In evaluating whether a petitioner served in a critical role, it is not the title of the role, but rather the individual's performance in that role that determines whether the role was critical. The Petitioner's arguments and evidence on appeal do not directly address the Director's determination that []'s letter provided insufficient evidence related to the Petitioner's performance in his role with []. []. The fact that branding is generally regarded in business circles as an important corporate function is not sufficient to support a finding that the Petitioner's specific contributions in his role with [] were of significant importance to the outcome of this organization's activities.

We also acknowledge the Petitioner's claim that he was the only director level employee in []'s brand department, but he did not provide adequate support for that claim. An undated, partial employee list from a third-party website that has no affiliation with [] is not sufficient to establish the management and personnel structure of the company's branding and public relations divisions during the Petitioner's tenure with the company. A claim that his role is leading or critical based on placement in the company's structure would be better supported by documentation derived from the company itself, such as an organizational chart.

We agree with the Director's determination that, while [] provided some insights into the nature of the Petitioner's job duties, her general assertion that he was "an important figure" who "contributed

to the Group's public image and internal strength" did not provide "probative information that specifically addresses how the petitioner's role for the organization was leading or critical."⁵

On appeal, the Petitioner further claims that he held a critical role with [REDACTED] and that the Director's decision failed to address evidence demonstrating that he was employed as "Executive Editor in Chief" for this publication.

At the time of filing, the Petitioner submitted a "Certificate" from [REDACTED] confirming the Petitioner's employment as an "Editorial Board Member" for [REDACTED] from September 2009 until February 2015. The certificate, which bears a company seal but is not attributed to an individual representative of the company, includes a two-sentence description of the Petitioner's duties. The Petitioner also submitted media articles about [REDACTED] examples of a regular column that he wrote [REDACTED] for [REDACTED] between 2011 and 2013, and copies of internal emails intended to demonstrate his decision-making authority as an editor. Finally, the Petitioner submitted a reference letter from [REDACTED] at the *Financial Times*, who describes the Petitioner's duties as "Executive Editor" with [REDACTED]. However, [REDACTED] does not claim to have any affiliation with [REDACTED] or to know the Petitioner personally.

In the RFE, the Director acknowledged receipt of this evidence, but, as noted above, advised the Petitioner that he would need to submit letters from his employers' high-level executive officers with personal knowledge of his leading or critical role, who could provide detailed and probative information about his specific tasks and accomplishments. The Petitioner did not submit any additional evidence related to his role with [REDACTED] in his response to the RFE, although we note that in the accompanying cover letter, he stated that "USCIS did not question [his] leading role as Executive Editor at [REDACTED]." We note, however, that the RFE did not convey that the Director found the initial evidence regarding his position with [REDACTED] sufficient to establish the Petitioner's eligibility under this criterion.

The Petitioner emphasizes on appeal that his role as "Executive Editor in Chief" was "critically important to the outcome of the organization" because he was responsible for "managing topic selection, quality control and review of the whole press daily news reports." The Petitioner submitted copies of business e-mails from 2012 as evidence that he performed some of these duties. Both the emails and the employment certificate issued by the company indicate that the Petitioner was an editorial board member; this evidence does not indicate that he was [REDACTED] "Executive Editor in Chief" as now claimed on appeal. The duties emphasized by the Petitioner are mentioned in the company's certificate, which indicates that he performed these tasks when acting as "on-duty Editorial Board Member."

The evidence submitted is sufficient to establish that [REDACTED] has a distinguished reputation. However, the record lacks a detailed letter from a senior official at [REDACTED] with personal knowledge of the significance of the Petitioner's role who can provide detailed and probative information that specifically addresses how his role was leading or critical for the organization. As noted, the only letter from [REDACTED] is not attributed to an individual company representative and includes a two-sentence job description. This brief employment confirmation does not explain how the Petitioner's role was

⁵ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

leading compared to other editorial staff, nor did it indicate that his role was of significant importance for this organization's success or standing so as to demonstrate a critical role. Accordingly, we agree with the Director's determination that this criterion was not met.

Evidence that the individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix)

In order to satisfy this criterion, a petitioner must demonstrate that he has commanded a high salary or other significantly high remuneration for services in relation to others in his field.⁶

As evidence of his past earnings, the Petitioner submitted: (1) copies of offer letters from his current employer and two prior employers [redacted]; (2) a "Proof of Income" letter from a third prior employer, [redacted] that he joined in 2018⁷; (3) his pay statements for the months of April, May and June 2019; and (4) his bank statement for the period May 2018 to May 2019, with deposits highlighted as evidence of his "after-tax salary."

We note that the offer letters alone provide insufficient evidence of the Petitioner's prior earnings. Further, the deposits highlighted on the Petitioner's bank statement do not identify the source of the funds transferred and therefore are not sufficient to corroborate the salary the Petitioner received as an employee with [redacted]. However, the Petitioner has documented his receipt of a basic annual salary of 900,000 RMB in his current role as "deputy general manager" [redacted] [redacted] by providing his April 2019 pay statement.⁸

In support of his claim that he commanded a high salary in relation to others in the field, the Petitioner initially submitted a 2017 Annual Survey of the China International Public Relations Association (CIPRA). This report was based on surveys of 40 "major public relations companies in mainland China." In a section titled "Operation Management," it states "[t]he average annual salary is 13733 yuan/month," but the report does not specify to which occupation this average figure refers, and therefore does not provide a meaningful basis for comparison to the Petitioner's deputy general manager position. In fact, when read in context, it appears that the cited salary is the average paid among all employees in the top 30 public relations companies in China and is not position-specific. The 12-page report does not include any additional salary information.

The Petitioner also converted his Chinese salary to U.S. dollars and provided data from a U.S. Department of Labor website indicating that the converted salary would place him among high salary earners for the "Public Relations Specialist" occupation in [redacted]. However, individuals who have been working in different countries must be evaluated based on evidence of wages paid in their own country, rather than converting their local salary to U.S. dollars and using U.S.-based wage data as a basis for comparison.

⁶ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11 (indicating that it is a petitioner's burden to provide appropriate evidence such as geographical or position-appropriate compensation surveys).

⁷ This letter is from [redacted] but states that the Petitioner was employed by [redacted] as a deputy brand officer beginning in April 2018, with a monthly salary of 88,000 RMB. The record does not clarify the relationship between these two entities.

⁸ The petition was filed in April 2019.

Finally, in response to the Director's RFE, the Petitioner submitted excerpts from a Robert Walters 2019 Salary Survey for Greater China & Southeast Asia. The Petitioner highlighted the salary for a "Senior Brand Manager" in the FMCG (fast-moving consumable goods) industry in the [redacted] region. The range given is a base annual salary of "450-720k" yuan (exclusive of benefits and bonuses). The survey did not include job description for the included job titles and did not identify percentiles for the high and low salaries in the provided range.

As noted, the Petitioner provided evidence that he is the "Deputy General Manager of Brand Management Center" for [redacted]. The Petitioner has not submitted a description of his position or information regarding its associated level of responsibility and authority. However, the job title on its face implies that the Petitioner is the deputy in charge of brand management division or department, rather than a brand manager or senior brand manager." Therefore, while the Petitioner's salary is higher than that reflected in the survey, the limited information provided suggests that he holds a higher-level position.

It is the Petitioner's burden to demonstrate that he has commanded a high salary "in relation to others" who are employed in the same or similar position and not at a lower level in the same occupational area. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). The Petitioner has not established that the salary of a senior brand manager in the FMCG industry is an appropriate basis for comparison for his position as a deputy general manager of a brand department or division.

Accordingly, the Petitioner did not establish that he meets this criterion.

B. Sustained National or International Acclaim

Because we do not find that the Petitioner has shown that he meets at least three of the above criteria, we need not render a final merits determination as described in *Kazarian*, 596 F.3d at 1119-20.⁹ Nevertheless, because the Director granted two criteria and we granted a third (while withdrawing one previously granted), we will briefly discuss whether the evidence otherwise establishes the Petitioner's eligibility for the requested classification.

The statutory threshold is sustained national or international acclaim; 8 C.F.R. § 204.5(h)(2) requires a showing that the Petitioner is in the small percentage at the very top of the field. In this instance, the Petitioner has provided evidence of his achievements as both a financial journalist and as a corporate brand manager. The Petitioner's recognition and reputation, however, have not been shown to rise to the very high level of sustained national or international acclaim.

⁹ *See also* USCIS Policy Memorandum PM 602-0005.1, *supra* at 4 (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

Regarding the Petitioner's achievements as a financial journalist, the evidence reflects that he received recognition from the field for his 2006 investigative report [redacted] published by *Caijing* magazine. The petitioner provided evidence that his report was later selected by a *Southern Weekend* [redacted] issue as "the best investigative report of the year." A former deputy editor of *Southern Weekend* explains that the Petitioner's report "caused a sensation" and is regarded as "the most authoritative and detailed report" of the [redacted] Social Security corruption case. *Southern Weekend's* current deputy editor in chief indicates that the Petitioner was personally invited to serve as a judge for a subsequent *Southern Weekend* [redacted] issue as a result of the "far reaching and profound influence" of his report. While the record indicates that he received recognition for his investigative report that led to a judging opportunity for a prominent magazine, these events occurred ten years before the filing of the petition and do not provide sufficient evidence of his sustained national or international acclaim.

As noted, the Petitioner provided evidence that he co-authored a financial journalism textbook in 2006 which, according to submitted reference letters, is recognized as the first of its kind in China, has inspired others to write similar books in this subject area, and has been cited at least 30 times. While the Petitioner provided evidence the book is widely available and a letter from the publisher indicating that it has been adopted by many national journalism colleges as recommended reading, the record does not establish that the publication of the book and its reception have resulted in his recognition as being among the small percentage at the very top of his field.

Finally, the record demonstrates that the Petitioner's successes as a reporter enabled him to advance in his career to an editorial role when he joined the editorial board of [redacted] in 2009. While the record establishes that this is an important position with a prominent publication, the record does not support his claim that he was "Executive Editor in Chief," nor does it reflect that he received recognition for his achievements during his tenure with [redacted] consistent with sustained national or international acclaim. Even if we determined that the Petitioner had served in a critical role with [redacted] we note that serving in high-ranking positions for distinguished employers, is not intrinsically evidence of acclaim. By way of analogy, even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994).

Overall, the record demonstrates that the Petitioner has been very successful in the field and is regarded by his peers and colleagues as an expert in financial journalism. However, the record is not supported by extensive evidence consistent with a finding that he has a "career of sustained acclaim," nor has he established that any national acclaim he may have achieved early in his career has been sustained. Here, the Petitioner submitted evidence of one published report that received wide recognition, one invitation to participate as a judge of his peers, and authorship of one well-received book. On appeal, the Petitioner asserts that some of his other articles and reports have been republished and that the reproduction of his articles is evidence of his sustained acclaim, but this assertion is not adequately supported. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).

The record further reflects that, more recently, the Petitioner made a career transition from financial journalism to corporate brand management. The record reflects that he has been employed by four different companies between 2015 and 2019, and he has submitted evidence related to his role with [REDACTED], and evidence of his earnings with his most recent employer. This evidence portrays the Petitioner as a successful, managerial- or executive-level worker in this second field, but success is not synonymous with acclaim, and the evidence does not support a finding that he has received recognition for his achievements in this field consistent with the very high standards for this classification.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals at the top of their respective fields. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.